IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.18942 OF 2000

V. Balasubramanian,
S/o. Velayutham Pillai,
Associate Professor,
Soil Water Conservation Engineering,
Water Technology Centre,
Tamil Nadu Agricultural University,
Coimbatore -3. .. Petitioner

-Vs-

1. Tamil Nadu Agricultural University,
Rep. by its Registrar,
Coimbatore 3.

2. The Director,
Water Technology Centre,
Tamil Nadu Agricultural University,
Coimbatore -3. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.V. Ramasubramanian

For Respondents : Mrs. Geetha
Mr.A. Jinasenan

:J U D G M E N T

Petitioner is presently working as Associate Professor in Soil Water Conservation Engineering, Water Technology Centre, Tamil Nadu Agricultural University, the respondent No.1. The petitioner holds a Masters Degree in Engineering and M.S. Degree. He was appointed in the year 1979 and was being given increments from time to time. However, under the impugned orders dated 25.9.2000, 11-7-2000 and 2-5-2000, there was a direction that the increments paid to the petitioner from 1.1.1992 should be realised from him and he would not be entitled to any increment after 1.1.1992. This was on the footing that the petitioner had not acquired Ph.D. Degree. Such orders have been

challenged in the present writ petition.

2. It is not disputed that the impugned orders are based on audit objection, which refers to G.O.Ms.No.208 dated 27.3.1989. In the audit objection, it has been indicated that the petitioner having not obtained Ph.D. degree and having not registered his name as per the time schedule allowed by the Government from time to time, was not eligible to get any increment after 1.1.1992 and his scale should have been fixed as per UGC pay scale from 31.12.1991. It is the contention of the petitioner that requirement relating to Ph.D. qualification was not applicable to Agricultural Engineering. The other contention is to the effect that even assuming that such qualification was applicable, there is no requirement that increment of the existing incumbent should be with-held.

3. A counter affidavit has been filed on behalf of respondent No.1, wherein reference has been made to various Government Orders, namely G.O.Ms.No.62 dated 10.1.1979, G.O.Ms.No.1633 dated 23.8.1984, G.O. Ms.No.279 dated 6.3.1987 and G.O.Ms.No.208 dated 27.3.1989 and it has been indicated that the petitioner having not acquired Ph.D., qualification and having not registered his name, had been sanctioned increments erroneously, and therefore, there was a direction for recovery of the said amount.

4. To appreciate the rival contentions, it would be necessary to notice the various Government Orders issued from time to time. The first relevant Government Order is G.O.Ms.No.62 dated 10.1.1979. The said order was in relation to implementation of the pay scale fixed by U.G.C. and the qualification for various posts. A bare reading of the aforesaid Government Order makes it clear that qualification had been prescribed in respect of faculties other than Agricultural University and a separate set of qualification has been prescribed for Agricultural Engineering only. So far as the aforesaid faculty is concerned, the qualification for the Associate Professor was Ph.D., or M.E., or M.Tech., or M.Sc., with 5 years of experience. The respondents, however, have laid much emphasis on paragraph 6 of the said G.O., which is extracted hereunder :-

 6. The Government also consider that teachers now in service aged 50 years and above on the date of issue of this order will be exempted from acquiring Ph.D. degree. Others should acquire Ph.D., qualification within five years from the date of issue of this order. During the interim period of five years, if any higher posts are advertised for recruitment, the existing regular candidates of the University may apply for such posts irrespective of their qualifications but selections will be made after taking into account their experience and competence.

5. Subsequently, in G.O.Ms.No.1633 dated 23.8.84, reference was made to G.O.Ms.No.62 dated 10.1.79 and after referring to qualifications prescribed in the earlier G.O., the Government extended the time for acquisition of Ph.D., degree. Similar extension was given in G.O. Ms.No.279 dated 6.3.87. Ultimately, G.O.Ms.No.208 dated 27.3.1989 was issued. This was

issued in connection with the scale of pay recommended by the U.G.C.. Paragraphs 18 and 19 relate to Associate Professor and are extracted here under :-

 (XVIII) Associate Professor in the existing grade of Rs.1200-1900 will be placed at the appropriate stage in the revised selection grade of Rs.3700-5700 in accordance with the pay fixation formula under this scheme. Existing Assistant Professors who have completed or will complete a total period of sixteen years of service on 1.1.1986 or thereafter, will be eligible for appointment to the post of Associate Professor a placement in the Selection Grade in accordance with the provisions in Sub-para (xv) (xvi) and (xvii). They will also be entitled to the relaxation in the years of service by 3 years if they hold Ph.D. degree as mentioned in sub-para (xiii).

(XIX) Every Associate Professor shall be eligible for appointment to the post of Professor in the scale of Rs.4500-300,if he/she has

a) completed five years of service as Associate Professor and be obtained Ph.D. degree.

Explanation:

The existing incumbents who are not Ph.D. degree holders will also be eligible for pay fixation-in the new University Grants Commission scale of pay appropriately.

6. So far as paragraph-xiii, which has been referred to in paragraph-xviii, lays down that candidates who at the time of their recruitment possess Ph.D. degree will be sanctioned three advance increments. Paragraph-xiii which was in relation to Assistant Professors was thus made applicable to Associate Professors.

7. A careful reading of the aforesaid Government Orders issued from time to time clearly indicates that there was no requirement that for the post of Associate Professor in Agricultural Engineering the candidate should have minimum qualification of Ph.D. degree. Even though such requirement has been prescribed in other faculties, the qualification prescribed for Agricultural Engineering was different, which has already been extracted. Paragraph 6 of G.O.Ms.No.62 dated 10.1.7 9, obviously had no applicability relating to appointment of Associate Professor in Agricultural Engineering. The two subsequent G.Os., G.O.Ms.No.1633 and G.O.Ms.No.279 only extended the date for acquisition of Ph.D. degree for those who were required to obtain Ph.D. degree. These orders did not have any applicability so far as the petitioner is concerned.

8. Reference to G.O.Ms.No.208 dated 27.3.1989 by the Audit

Department as well as in the subsequent impugned orders appears to be misconceived. Paragraph XVIII of such Government Order refers to Associate Professor and lays down that such Associate Professor in the grade of Rs.1200-1900 would be placed at the appropriate stage in the revised scale of Rs.3700-5700. It is further indicated that they would also be entitled to relaxation of service by three years if they hold Ph.D. degree as mentioned in sub-para (xiii). There is no provision that those Associate Professors were otherwise qualified at the time of their initial appointment shall not be entitled to increments if they do not have Ph.D. degree. On the other hand, paragraph- xix makes it clear that an Associate Professor shall be eligible for appointment to the post of Professor if he has completed 5 years service as Associate Professor and has obtained Ph.D. degree. In other words, acquisition

of Ph.D. degree may be a requirement for being appointed as Professor as per G.O.Ms.No.208, but there is no provision which lays down that an existing Associate Professor, having been selected on the basis of qualification prescribed at the relevant time, would not be entitled to any further increments unless he acquires Ph.D. degree. On the other hand, explanation to the effect that existing incumbents, who are not Ph.D. degree holders, will also be eligible for pay fixation in the University Grants Commission scale of pay appropriately, makes it clear that such persons are to be also given the benefit of UGC pay scale.

9. It is thus apparent from the above analysis that the impugned orders, so far as they relate to the present petitioner is concerned, are based on misconception and misreading of G.O.Ms.No.62 dated 10.1.1979, G.O.Ms.No.1633 dated 23.8.1984 and G.O.Ms.No.208 dated 27.3.198 9. Such impugned orders are hereby quashed and it is hereby directed that recovery, if any, made from the petitioner should be refunded and the petitioner shall be entitled to all the benefits for the post of Associate Professor till his retirement notwithstanding the fact that he had not acquired Ph.D. degree. However, it is made clear that the petitioner shall not be eligible to be promoted as Professor.

10. In the result, the writ petition is allowed and the aforesaid direction shall be carried out within a period of three months from the date of receipt of this order.

Index : Yes
Internet : Yes

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To

1. Tamil Nadu Agricultural University,
Rep. by its Registrar,

Coimbatore 3.

2. The Director,
Water Technology Centre,
Tamil Nadu Agricultural University,
Coimbatore -3.